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SRI BANGUNAN SDN BHD

v.

MAJLIS PERBANDARAN PULAU PINANG & ANOR

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FEDERAL COURT, PUTRAJAYA
NIK HASHIM FCJ
AUGUSTINE PAUL FCJ
AZMEL MAAMOR FCJ
[CIVIL APPEAL NO: 01-7-2006 (P)]

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27 AUGUST 2007

ADMINISTRATIVE LAW: *Exercise of administrative powers - Local authority - Application by developer for planning permission - Direction by local authority for existing building to be preserved - Appeal against*

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directive to Appeal Board - Whether incompetent - Whether directive not an appealable decision - Town and Country Planning Act 1976, ss. 21(3), (5), 22(3), (6), 23(1) - Planning Control (General) Rules 1990, r. 10

STATUTORY INTERPRETATION: *Construction of statutes - Interpretation - Literal and purposive approach - Section 21(3) Town and Country Planning Act 1976 - Directive of local authority made thereunder - Whether appealable - Whether an appealable decision within meaning of s. 23 of Act*

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The appellant, a developer, had sought to develop a certain property in George Town, Pulau Pinang, and for that purpose had applied for planning permission from the first respondent, the local planning authority. By a decision made on 14 October 1996 pursuant to s. 21(3)(g) of the Town and Country Planning Act

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1976 ('the Act'), and subsequently by letter dated 18 November 1996, the first respondent directed the appellant to preserve the existing building at the site and to erect the proposed development within the vicinity thereof ('the direction'). The direction apart, the letter also required the appellant to resubmit the amended plan

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within two months. The appellant, however, did not comply. Instead it appealed to the second respondent, the Appeal Board established under s. 36 of the Act ('the Board'), against the direction. The first respondent raised a preliminary objection that the Board had no jurisdiction to entertain the appeal on the

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ground that the direction was not an appealable decision within the meaning of s. 23 of the Act. The objection, however, was

dismissed by the Board who ruled that the first respondent had no power to issue the direction upon a purposive interpretation of s. 21(3) of the Act. The first respondent applied for an order of *certiorari* to quash the decision of the Board, but the Board's decision was affirmed by the High Court *inter alia* on the ground that the direction, upon the principle of *casus omissus*, was indeed *ultra vires* the Act. On appeal, the Court of Appeal however reversed the High Court, ruling that it had embarked on an exercise of unauthorized legislation. The appellant had obtained leave to appeal to the Federal Court, and in the circumstances posed the following question to the learned justices herein, namely: "whether a direction given by a local authority under s. 21(3) of the Town and Country Planning Act 1976 to an applicant for planning permission under the said Act is a 'decision' which is appealable under s. 23 of the Act".

Held (answering question in the negative):
Per Nik Hashim FCJ delivering the judgment of the court

(1) According to s. 22 of the Act, a decision granting planning permission with or without conditions shall be conveyed to the applicant in the prescribed form. The relevant forms are prescribed under r. 10 of the Planning Control (General) Rules 1990 ('the Rules'), namely Form C(1) and Form C(2) respectively. (para 15)

(2) In construing a statute, the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court is not entitled to read words into a statute unless clear reason for it is found in the statute itself. In the present case, to accede to the interpretation contended by the appellant that written directions issued by a local planning authority pursuant to s. 21(3)(g) of the Act can be made subject of an appeal under s. 23 of the Act would tantamount to reading into the section words which are not there. In the absence of clear necessity, this is a wrong thing to do. (paras 18 & 22)

(3) The reasoning of both the second respondent and the High Court was untenable and contrary to all established principles and authorities on statutory interpretation. The decision of the first respondent made on 14 October 1996 and contained in the letter of 18 November 1996 is neither in

Form C(1) nor Form C(2) to the Rules. That being so, the appellant cannot by resorting to the purposive approach or the principle of *casus omissus* legalize its appeal to the second respondent under s. 23 of the Act when the express provisions of the said s. 23 read together with s. 22(3) and 22(6) of the Act and r. 10 of the Rules do not permit it. From the provisions, it is clear that the intention of the legislature was only to provide for an appeal to the second respondent against a refusal to grant planning permission or the grant of planning permission subject to a disputed condition and not in any other circumstances. (paras 27 & 28)

(3a) Consequently, we would agree with the first respondent that only a decision made under s. 22(3) of the Act can be made subject of an appeal under s. 23 of the Act. In other words, an appealable decision would be one granting or refusing planning or imposing a disputed condition. (para 27)

(4) In any case, the appellant's non-compliance with the first respondent's letter of 18 November 1996 for it to amend the plan amounted to a failure to resubmit the plan as directed. Therefore, pursuant to s. 21(5) of the Act, the application for planning permission was deemed to be withdrawn with the result that the question of an appealable decision having been made by the first respondent did not at all arise. (para 26)

Bahasa Malaysia *translation of headnotes*

Perayu, sebuah syarikat pemaju, ingin membangunkan sebidang tanah di bandar George Town, Pulau Pinang, dan untuk itu telah memohon kebenaran merancang dari responden pertama, iaitu pihak berkuasa tempatan perancangan. Melalui satu keputusan yang dibuat pada 14 Oktober 1996 di bawah s. 21(3)(g) Akta Perancangan Bandar dan Desa 1976 ('Akta'), dan kemudian melalui surat bertarikh 18 November 1996, responden pertama mengarahkan perayu supaya mengekalkan bangunan sedia ada dan mendirikan pembangunan yang dicadang di sekitar bangunan tersebut ('arahan'). Selain itu, surat juga meminta supaya perayu mengemukakan semula pelan terpinda dalam tempoh dua bulan. Arahan, bagaimanapun, tidak dipatuhi perayu. Sebaliknya, perayu memfailkan rayuan kepada responden kedua, iaitu Lembaga Rayuan

yang dilantik di bawah s. 36 Akta ('Lembaga'). Responden pertama membangkitkan bantahan awal bahawa Lembaga tidak berbidangkuasa untuk melayani rayuan atas alasan bahawa arahan bukan satu keputusan yang boleh dirayui di bawah s. 23 Akta. Bantahan, bagaimanapun, ditolak oleh Lembaga yang memutuskan bahawa responden pertama tiada kuasa untuk mengeluarkan arahan berdasarkan pentafsiran purposif s. 23(1) Akta. Berikutnya responden pertama memohon perintah *certiorari* bagi membatalkan keputusan Lembaga, namun keputusan Lembaga telah disahkan oleh Mahkamah Tinggi atas alasan, antara lain, bahawa arahan adalah *ultra vires* Akta berdasarkan prinsip *casus omissus*. Keputusan Mahkamah Tinggi ini bagaimanapun telah diakas oleh Mahkamah Rayuan semasa rayuan, atas alasan bahawa mahkamah tersebut telah melaksanakan tafsiran undang-undang yang tidak dibenarkan. Perayu memperoleh kebenaran untuk merayu ke Mahkamah Persekutuan, dan berikut itu mengajukan soalan berikut kepada yang arif hakim-hakim di sini, iaitu: "sama ada suatu arahan yang diberikan oleh pihak berkuasa tempatan di bawah s. 21(3)(g) Akta Perancangan Bandar dan Desa 1976 kepada seorang pemohon yang memohon kebenaran merancang di bawah Akta tersebut merupakan suatu 'keputusan' yang boleh dirayui di bawah s. 23 Akta".

Diputuskan (menjawab soalan secara negatif):
Oleh Nik Hashim HMP menyampaikan penghakiman mahkamah

(1) Menurut s. 22 Akta, keputusan untuk memberi kebenaran merancang sama ada bersyarat ataupun tidak hendaklah disampaikan kepada pemohon melalui borang yang ditetapkan. Borang-borang berkenaan telah ditetapkan oleh per. 10 Peraturan-Peraturan Kawalan Perancangan (Am) 1990 ('Peraturan'), iaitu Borang C(1) dan C(2).

(2) Dalam mentafsir statut, tanggungjawab mahkamah adalah terhad kepada mentafsir perkataan-perkataan yang digunakan oleh badan perundangan iaitu dengan memberikan perkataan-perkataan tersebut kesan-kesan dan natijahnya. Mahkamah tidak boleh menokok tambah perkataan-perkataan lain ke dalam statut kecuali jika ia jelas dibenarkan oleh statut itu sendiri. Dalam kes semasa, menyetujui hujah perayu bahawa arahan-arahan yang dikeluarkan oleh mana-mana pihak

berkuasa perancangan di bawah s. 21(3) Akta boleh tertakluk kepada suatu rayuan di bawah s. 23 Akta bermakna menokok tambah ke dalam seksyen tersebut perkataan-perkataan yang tidak ada di situ. Dalam ketiadaan keperluan yang jelas baginya, ia adalah satu perkara yang salah untuk dilakukan.

(3) Taakulan-taakulan yang dibuat oleh kedua-dua responden kedua dan Mahkamah Tinggi tidak boleh dipertahankan dan adalah bertentangan dengan semua autoriti dan prinsip mantap pentafsiran statut. Keputusan responden pertama yang dibuat pada 14 Oktober 1996 seperti yang terkandung di dalam surat bertarikh 18 November 1996 bukanlah dibuat di dalam Borang C(1) ataupun C(2) Peraturan. Maka itu, perayu tidak boleh dengan cara menggunapakai pendekatan purposif atau prinsip *casus omissus* mempersahkan rayuannya kepada responden kedua di bawah s. 23 Akta sedangkan peruntukan nyata s. 23 tersebut dibaca bersama dengan s. 22(3) dan 22(6) Akta serta k. 10 Peraturan tidak membenarkannya. Adalah jelas dari peruntukan-peruntukan ini bahawa niat badan perundangan adalah untuk membenar rayuan kepada responden kedua hanya terhadap keengganan memberi kebenaran merancang atau di mana kebenaran merancang diberi tetapi diselit dengan syarat-syarat yang dipertikai, dan tidak dalam keadaan-keadaan lain.

(3a) Oleh itu, kami bersetuju dengan responden pertama bahawa hanya keputusan yang dibuat di bawah s. 22(3) Akta sahaja boleh tertakluk kepada rayuan di bawah s. 23 Akta. Dengan kata lain, keputusan yang boleh dirayui adalah keputusan yang membenar atau tidak membenarkan perancangan atau yang mengenakan syarat yang dipertikai.

(4) Walau apapun, ketidakpatuhan perayu terhadap surat responden pertama bertarikh 18 November 1996 supaya meminda pelan adalah suatu kegagalan untuk mengemukakan semula pelan seperti yang diarahkan. Oleh itu, berdasarkan s. 21(5) Akta, permohonan untuk kebenaran merancang dianggap telah ditarik balik berakibat soal sama ada atau tidak suatu keputusan yang boleh dirayui telah dibuat tidak berbangkit sama sekali.

Case(s) referred to:

Majlis Perbandaran Pulau Pinang v. Lembaga Rayuan Negeri Pulau Pinang & Anor [1998] 4 CLJ 771 HC ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasamasama Sungai Gelugor [1999] 3 CLJ 65 FC ***(refd)***

Metramac Corp Sdn Bhd v. Fawziah Holdings Sdn Bhd [2006] 3 CLJ 177 FC ***(refd)***

NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd [1986] 1 LNS 79 SC ***(refd)***

Syarikat Bekerjasama-sama Serbaguna Sg Gelugor dgn Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang [1996] 3 CLJ 335 CA ***(refd)***

Vengadasalam v. Khor Soon Weng & Ors [1985] 1 LNS 46 SC ***(refd)***

Legislation referred to:

Planning Control (General) Rules 1990, r. 10

Town and Country Planning Act 1976, ss. 21(3)(g), (5), 22(3), (6), 23, 24(5), 36

For the appellant - Dato' Ghazi Ishak (K Balasundaram with him); M/s Balasundaram & Co

For the 1st respondent - Gurbachan Singh (Lourdunathan Andrew with him); M/s Andrew & Co

For the 2nd respondent - Ruzaimah Mohd Ridzuan, Assistant State Legal Adviser, Pulau Pinang

[Appeal from Court of Appeal, Civil Appeal No: P-01-45-02]

Reported by WA Sharif

JUDGMENT

Nik Hashim FCJ:

The Question

[1] On 24 July 2006, this court granted leave to appeal on the following question:

> Whether a direction given by a local authority under section 21(3)(g) of the Town and Country Planning Act 1976 to an applicant for planning permission under the said Act is a 'decision' which is appealable under section 23 of the said Act.

Background

[2] The 1st respondent is a local authority incorporated under the Local Government Act 1976 and is the local planning authority for the island of Pulau Pinang pursuant to the Town and Country Planning Act 1976 (the Act).

[3] The 2nd respondent, Lembaga Rayuan Negeri Pulau Pinang, is constituted under s. 36 of the Act to hear appeals pursuant to s. 23 of the Act against decisions of the local planning authority made under s. 22(3) of the Act.

[4] The appellant is a developer.

[5] The facts are that on 30 December 1993, the appellant made an application for planning permission for development, namely the demolition of the existing building known as No. 457 Jalan Burma, (the building) on Lot No. 2334, section 1 George Town, North East District, Pulau Pinang (the land) and for the erection of 20-storey service apartment on the land.

[6] By a letter dated 26 April 1994, the 1st respondent directed the appellant pursuant to s. 21(3)(g) of the Act to amend the plans submitted together with its application in accordance with the list of 16 requirements and comments of the relevant departments and to resubmit the amended plans within three months failing which the application was deemed to have been withdrawn. However, under s. 21(5) of the Act the appellant may submit a fresh application.

[7] The requirement No. 16 (the direction) was as follows:

> Adalah diperakukan bangunan sediada yang menarik dikekalkan dan pemajuan baru direkabentuk di sekeliling bangunan ini.

[8] By a letter dated 21 February 1995 and after the expiry of the stipulated period of three months the appellant's architect returned to the 1st respondent the amended layout plans (the plan) for its further consideration and approval together with a fresh proposal for the demolition of the building and for the erection of a 24-storey building on the land.

[9] The 1st respondent, however, *vide* its letter dated 18 November 1996, directed the appellant to amend the plan accordingly in order to comply with the decision of the 1st respondent made on 14 October 1996 directing the appellant to preserve the building and to erect its proposed building in the vicinity of the building. The appellant was also required to resubmit the amended plan within two months. The above letter containing the direction reads as follows:

Ruj. tuan : JPB/PM/1630
Ruj. Kami :
Tarikh : 18 Nov. 1996

M/s Sri Bangunan Sdn. Bhd.
14A Lebuh Chulia
10200 Pulau Pinang

Tuan,

JPB/PM/1630 – PERMOHONAN KEBENARAN MERANCANG UNTUK MENDIRIKAN BANGUNAN 24 TINGKAT DAN BASEMEN YANG MENGANDUNGI 60 UNIT PANGSAPURI, PEJABAT, RESTORAN DAN TEMPAT LETAK KERETA DI ATAS LOT 2334, SEK. 1, BANDAR GEORGE TOWN, DTL., JALAN BURMA, PULAU PINANG UNTUK M/S SRI BANGUNAN SDN. BHD.

Saya adalah diarah merujuk kepada permohonan tersebut di atas dan ingin memberitahu bahawa Majlis pada 14.10.96 telah memutuskan supaya:

i) permohonan perlingkungan semula dari 'pelajaran' kepada 'perdagangan' adalah diperakukan tetapi Bangunan No. 457 Jalan Burma hendaklah dikekalkan. Pemaju boleh membina di tepi bangunan sediada. Walau bagaimanapun, sekiranya pemaju ingin merobohkan bangunan sediada, mereka perlu menunggu siapnya kajian bangunan-bangunan warisan di Pulau Pinang oleh Jawatankuasa Pemeliharaan di peringkat Negeri.

2. Sila ambil tindakan yang sewajarnya untuk meminda pelan supaya mematuhi arahan-arahan Majlis dan mengemukakan semula pelan tersebut dalam tempoh 2 bulan dari tarikh surat ini untuk dipertimbangkan selanjutnya oleh Majlis.

3. Sekiranya permohonan tidak dikemukakan dalam tempoh tersebut tuan akan dianggap tidak berminat lagi untuk meneruskan permohonan ini dan permohonan akan disifatkan sebagai ditarikbalik.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t.

(Tan Thean Siew)
b/p Setiausaha
Majlis Perbandaran Pulau Pinang

A s.k. Arkitek Tan Jeng Song
58-4-1, Fortune Heights
Jalan Cantonment
10250 Pulau Pinang.

B **[10]** On 17 December 1996, the appellant appealed to the 2nd respondent against the direction of the 1st respondent under s. 23 of the Act for refusing to reconsider its decision to impose the direction and directing the appellant to comply with the said requirement.

C **Finding Of The Appeal Board**

[11] During the hearing of the appeal before the 2nd respondent, the 1st respondent raised a preliminary objection that the direction was not appealable under s. 23 of the Act. The 2nd respondent D however, overruled the preliminary objection and also held that the 1st respondent had no powers to issue the direction. The appeal board said at p. 313 of the appeal record as follows:

> However, section 23(1) cannot be read *ad litteram* and in isolation; that would only produce the absurd result that an applicant cannot E appeal and is without a recourse against a direction that is unreasonable, unlawful and or beyond the scope and ambit of the Act.

And the appeal board at p. 317 continued:

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> Even said beforehand, section 23(1) cannot be *ad litteram.* It must be read within the context of the Act read as a whole. Its meaning must be ascertained *noscitur a sociis* by reference to associated words and associated provisions and the sense within the context of the Act as a whole.

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> And section 23(1) read within the context of the Act as a whole, surely provides, and this construction is entirely in accord with the objects of the Act, that an applicant may appeal against the decision (the word is used in the popular and not legal sense) of the local planning authority on the directions/conditions or refusal H of planning permission in relation to an application for planning permission.

Finding Of The High Court

[12] The 1st respondent's application for judicial review by way I of a writ of *certiorari* to quash the decision of the 2nd respondent was dismissed with costs by the High Court Pulau Pinang on 4

July 2002 and in doing so ruled that the direction was *ultra vires* the Act. The High Court in its grounds of judgment at p. 48 of the appeal record opined:

> I take the view that the decision referred to in section 23 of the Act must of necessity be taken to include any direction or ruling made by the applicant in relation to any matter that concerns that application for planning permission made pursuant to section 21(1) of the TCPA (the Act). I hold that the words 'written directions' in section 21(3) must by reason of legislative framework considerations be taken also to mean a decision of the local planning authority as provided under section 23(1). A written direction is also a decision.

And at pp. 52 and 53 the High Court ruled:

> It is my judgment that the problem in this case is one of *casus omissus* rather than one of being precise and unambiguous. It is regrettable that the TCPA has not provided for a situation where an applicant for planning permission is aggrieved by the imposition of a condition by way of written directions given pursuant to section 21(3) of the TCPA.
>
> The TCPA is both a consolidating as well as a comprehensive Act in respect of planning law in this country. The fact that section 36 provides for the establishment of an Appeal Board is sufficient to suggest that aggrieved parties involved in the process of planning should be given the right of an appeal. If, as suggested by the applicant, the literal approach is to be adopted then quite clearly it could result in an oppressive and capricious situation where a local planning authority for any one of several reasons could impose intolerable and improper written directions and an aggrieved applicant will not have any recourse to a remedy or an appeal.

Finding Of The Court Of Appeal

[13] The 1st respondent's appeal to the Court of Appeal against the decision of the High Court was, however, allowed by the Court of Appeal on 24 November 2004. The relevant part of the judgment of Gopal Sri Ram JCA at pp. 327 and 328 reads as follows:

> 8. It would appear that the High Court found against the appellant principally on the ground that there was a hiatus in section 23(1) of the Act. With respect I disagree. The section has been purposely cast in the way it has to avoid the 1st respondent being bogged down with appeals against all the directions which the

A appellant has to give in the course of carrying out its business. If Parliament intended for there to be a right of appeal against decisions made or directions given under other provisions of the Act it would have said so expressly. It is no function of a court, save in very exceptional circumstances as were present in
B *Chellapah v. Malayan Railway Administration* [1948-49] MLJ Supp 173, to supply omissions in a statute. In my respectful judgment, the High Court in the present case embarked upon an exercise of unauthorized legislation. I think that the High Court was concerned that someone in the position of the 2nd respondent would be remediless if there was no provision for an appeal. This
C is an error. Decisions, directions, acts and omissions of the appellant falling outside the immediate scope of section 23(1) of the Act may be made the subject matter of judicial review in the ordinary way. So, the 2nd respondent was not without recourse. In the present case it should have sought judicial review and not
D proceeded by way of appeal.

Finding Of This Court

[14] Since the interpretation of certain provisions in the Act are crucial in arriving at a decision in this appeal, the relevant
E provisions are reproduced below:

21. Application for planning permission

(1) An application for planning permission in respect of a development shall be made to the local planning authority
F and shall be in such form and shall contain such particulars and be accompanied by such documents, plans, and fees as may be prescribed.

(2) …

G (3) Where the development involves the erection of a building, the local planning authority may give **written directions** to the applicant in respect of any of the following matters, that is to say:

(a) the level of the site of the building;

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(b) the line of frontage with neighbouring buildings;

(c) the elevations of the building;

(d) the class, design, and appearance of the building;

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(e) the setting back of the building to a building line;

(f) access to the land on which the building is to be erected; and

(g) any other matter that the local planning authority considers necessary for purposes of planning.

(4) The applicant to whom any written directions are given under subsection (3) shall amend the plan submitted with his application accordingly and resubmit the plan within such period or extended period as the local planning authority may specify.

(5) If the plan is not resubmitted within the specified period or extended period, the application for planning permission shall be deemed to have been withdrawn but the applicant may submit a fresh application.

(6) …

(7) …

22. Treatment of applications

(1) …

(2) In dealing with an application for planning permission, the local planning authority shall take into consideration such matters as are in its opinion expedient or necessary for proper planning and in particular:

(a) the provisions of the development plan, if any;

(b) the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those provisions;

(ba) the provisions of the Sewerage Services Act 1993 [Act 508];

(bb) the development proposal report; and

(c) the objection, if any, made under section 21.

(3) After taking into consideration the matters specified in subsection (2), the local planning authority may, subject to subsection (4), grant planning permission either absolutely or subject to such conditions as it thinks fit to impose, or refuse to grant planning permission.

A (4) …

(5) …

(5A) …

B *(6) If planning permission is granted, whether with or without conditions, it shall be conveyed to the applicant in the prescribed form and at the same time a notice of the grant thereof shall be given to any person who has made any objection pursuant to subsection 21(6).*

C **23. Appeal against decision of local planning authority**

(1) An appeal against the decision of the local planning authority made under subsection 22(3) may be made to the Appeal Board within one month from the date of the communication of such decision to him, by:

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(a) an applicant for planning permission aggrieved by the decision of the local planning authority to refuse planning permission or by any condition imposed by the local planning authority in granting planning permission; and

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(b) a person who has lodged an objection pursuant to subsection 21(6) and is aggrieved by the decision of the local planning authority in relation to his objection.

F (2) …

(3) …

[15] According to s. 22(6) of the Act a decision granting planning permission with or without conditions shall be conveyed to the G applicant in the prescribed form. The relevant forms are prescribed under r. 10 of the Planning Control (General) Rules 1990 (the Rules) which states:

10. (1) A planning permission shall be in Form C(1) of the First Schedule.

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(2) A refusal to grant planning permission shall be in Form C(2) of the First Schedule.

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Form C(1):

FORM C(1)
PLANNING PERMISSION
(Rule 10(1))
pursuant to
Section 22(3) of the Town and Country
Planning Act 1976

Reference Number .....

By virtue of subsection 3 of section 22 of the Town and Country Planning Act 1976, planning permission is hereby granted to .....

(name of applicant)

of .....

(Address)

..... for the purpose of .....
.....

(State nature of development)

as shown in the attached plan on lot No. .....
in the Mukim/Town Section of .....

in the District/Town of .....

The grant of planning permission is subject to the following conditions:

.....
.....
.....

Date .....

SEAL .....
Authorized Officer

Form C(2):

FORM C(2)
REFUSAL OF PLANNING PERMISSION
(Rule 10(2))
pursuant to
Section 22(3) of the Town and Country Planning Act 1976

To:

.....

.....

.....

The .....
(Name of Local Planning Authority)

after dealing with your application and taking into consideration matters that are required by law has decided not to grant planning permission to .....
..... of .....
(Name of Applicant) *(Address)*

..... for the purpose of .....
.....
(State nature of development)
.....
on Lot No. in the Mukim/Town Section of .....
in the District/Town of .....

The local planning authority has decided not to grant planning permission for the following reasons:

.....
.....
.....
.....

Date .....

SEAL .....
Authorized Officer

[16] It is common ground that the direction was given under s. 21(3)(g) of the Act. A

[17] The appellant in this appeal is urging this court to uphold the decision of the High Court by adopting the purposive approach in interpretation of the Act and by resorting to the principle of *'causus omissus'* in view of the fact that Parliament has not provided for a situation where an applicant for planning permission is dissatisfied with a written direction or condition imposed by a local planning authority pursuant to s. 21(3) of the Act. B C

[18] In construing a statute the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court is not entitled to read words into a statute unless clear reason for it is to be found in the statute itself. D

[19] In *NKM Holdings Sdn. Bhd. v. Pan Malaysia Wood Bhd* [1986] 1 LNS 79 Seah SCJ delivering the judgment of the then Supreme Court reminded at pp. 22 and 23: E

> It must always be borne in mind that we are Judges, not legislators. The constitutional function of the courts is not only to interpret but also to enforce the laws enacted by Parliament. In enforcing the law we must be the first to obey it. It should be noted that the power of a court to proceed in a particular course of administering justice, was one of substance and not merely of form. The duty of the court, and its only duty, is to expound the language of Act in accordance with the settled rules of construction. The court has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. It seems to us to be unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a court censure on the Legislature (see Lord Chelmsford in *R v. Hughes* and Lord Macnaghten in *Vacher & Sons v. London Society of Compositors*). F G

[20] The case of *NKM Holdings Sdn. Bhd. (supra)*, was referred to by my learned brother Augustine Paul FCJ in the recent case of *Metramac Corp Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177 where he said at p. 200: H

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Thus when the language used in a statute is clear effect must be given to it. As Higgins J said in *Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd* [1920] 28 CLR 129 at pp 161-162:

> The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

The primary duty of the court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention (see *Nathu Prasad v. Singhai Kepurchand* [1976] Jab LJ 340). Thus the duty of the court, and its only duty, is to expound the language of a statute in accordance with the settled rules of construction and has nothing to do with the policy of any statute which it may be called upon to interpret (see *Vacher & Sons Ltd v. London Society of Compositors* [1913] AC 117; *NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd* [1987] 1 MLJ 39).

[21] In *Vengadasalam v. Khor Soon Weng & Ors* [1985] 1 LNS 46 at p. 450 Abdoolcader SCJ said:

> We would in this regard also advert to the decision of the House of Lords in *Thompson v. Goold & Co.* where Lord Mersey said in his speech (at page 420): "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do." Even more pertinent perhaps would be the speech of Lord Loreburn, L.C. in *Vickers, Sons and Maxim, Limited v. Evans* when he said (at page 445):
>
> > My Lords, this appeal may serve to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; …
> >
> > The appellant's contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

[22] Thus, to accede to the interpretation contended by the appellant that written directions issued by a local planning authority pursuant to s. 21(3)(g) of the Act can be made the subject of an appeal under s. 23 of the Act would tantamount to reading into the section words which are not there, and in the absence of clear necessity it is indeed a wrong thing to do.

[23] We agree with the Court of Appeal that the position in the present case is analogous to that obtained in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasamasama Sungai Gelugor* [1999] 3 CLJ 65 FC wherein it was held that an appealable decision under s. 23 of the Act would be one granting or refusing planning permission or granting planning permission subject to a disputed condition.

[24] In the *Sungai Gelugor (supra)*, the applicant was granted planning permission for the construction of a 10-storey low cost flats on 6 September 1991. When the planning permission expired, the applicant applied for an extension of the planning permission. On 20 July 1993 the local planning authority (the respondent) agreed to grant the extension subject to the additional condition that 30% of the units built must be sold at RM25,000 per unit (the disputed condition). The applicant by a letter dated 10 August 1993 appealed to the respondent urging the respondent to review the disputed condition. On 20 September 1993 the respondent refused the request for review and thereupon the applicant applied for leave to issue a writ of *certiorari* to quash the decision of the respondent made on 20 September 1993. The judge of first instance dismissed the application on the ground that an alternative remedy was available and that the applicant's failure to first appeal under s. 23 of the Act was fatal. The applicant appealed to the Supreme Court which set aside the High Court decision and gave leave to apply for *certiorari* and ordered the substantive motion to be heard by another judge. The second judge dismissed the substantive motion on the same ground as that by the first judge that an alternative remedy was available. The applicant appealed to the Court of Appeal ([1996] 3 CLJ 335) of the report that the respondent's decision rejecting the applicant's appeal for review of the disputed condition "was not made under s. 22(3) read together with s. 24(5) of the Act and was therefore not an appealable matter under s. 23. By this quirk of events, the appellant had no domestic remedy left and judicial

review was the only way to go." Edgar Joseph Jr. FCJ in affirming the decision of the Court of Appeal on this point said at p. 89 of the report:

> Dr. Das, for the Council, submitted that the Society's letter dated 10 August 1993 praying for a review of the Council's decision imposing the disputed decision was not an appeal under s. 23, read with s. 24(5) of the Act, to the Appeal Board constituted under s. 36, and indeed, Mr. Sethu for the Society himself submitted that the refusal by the Council to reconsider its decision to impose the disputed condition was not appealable under s. 23, read with s. 24(3) of the Act which provides that an appealable decision would be one granting or refusing planning permission or imposing a disputed condition. In our view, both these submissions by Dr Das and Mr Sethu are plainly correct.

[25] See also the case of *Majlis Perbandaran Pulau Pinang v. Lembaga Rayuan Negeri Pulau Pinang & Anor* [1998] 4 CLJ 771 where Abdul Hamid bin Mohamad J (as he then was) following the decision of the Court of Appeal in the *Sungai Gelugor* case ruled that the imposition of development charge by the Majlis was not appealable under s. 23 of the Act.

[26] In the present case there was a direction by the 1st respondent in its letter dated 18 November 1996 to the appellant directing the appellant to amend the plan. Instead of complying with the direction, the appellant appealed to the 2nd respondent. This amounts to failure to resubmit the plan as directed. Therefore, pursuant to s. 21(5) of the Act the application for the planning permission is deemed to be withdrawn. The question of an appealable decision having being made by the 1st respondent does not arise.

[27] Be that as it may, the appellant's notice of appeal dated 17 December 1996 to the 2nd respondent was an appeal against 14 October 1996 decision of the 1st respondent refusing to consider its decision to impose the direction and directing the appellant to comply with it. We agree with the 1st respondent that only a decision made under s. 22(3) of the Act can be made the subject of an appeal under s. 23 of the Act. In other words, an appealable decision would be one granting or refusing planning permission or imposing a disputed condition.

[28] Moreover, the decision of the 1st respondent made on 14 October 1996 contained in the letter dated 18 November 1996 is neither in Form C(1) nor Form C(2) to the Rules. The appellant cannot by resorting to the purposive approach or the principle of *casus omissus* legitimize its appeal to the 2nd respondent under s. 23 of the Act when the express provisions of the said s. 23 read together with s. 22(3) and 22(6) of the Act and r. 10 of the Rules do not permit this. It is evidently clear from their provisions that the intention of the legislature was only to provide for an appeal to the 2nd respondent against a refusal to grant planning permission or the grant of planning permission subject to a disputed condition and not in any other circumstances. Thus, we find that the reasoning of both the 2nd respondent and the High Court untenable and contrary to all established principles and authorities on statutory interpretation. Hence, our answer to the question is in the negative.

[29] We would like to mention that the appellant in its submission also touched on other issues such as procedural unfairness, the direction being *ultra vires* the Act and the failure by the Court of Appeal to mould the relief in its favour. We have considered them. However, we are of the view that they are irrelevant to the question which this court is called upon to answer in the appeal.

[30] Accordingly, we dismiss the appeal with costs and order that the deposit be paid to the respondents to account of their taxed costs.

[31] My learned brothers Augustine Paul and Azmel Maamor, FCJJ have seen this judgment in draft and have expressed their agreement with it.